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DOCKET FILE COPY ORIGINAL

January 17, 1995

Review Board - Stop Code 1900
Federal Communications Commission
Washington, DC 20554

RECEIVED

JAN 17 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

re: El Rio, California, MM Docket 93-87

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Gentlemen:

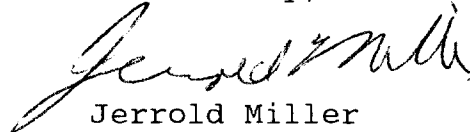
Transmitted herewith are an original and eleven copies of the Joint Request for Approval of Settlement Agreement in the above-captioned proceeding. You have previously granted an extension until this date for either the submission of the settlement agreement, or the filing of exceptions to the initial decision. Accordingly, the submission is timely.

The agreement contemplates the grant of the application of Raymond W. Clanton and the dismissal of the application of Loren F. Selznick, in return for payment by Clanton of monetary consideration to Selznick, pursuant to the terms thereof, upon Commission approval. Clanton's application was granted by the initial decision; it faces no qualifying issues. Accordingly, there is no impediment to the grant of Clanton's application. The agreement further seeks the vacation of the findings and conclusions of the initial decision.

Please note that the statement verifying Selznick's expenses is not attached. It will be submitted promptly by Selznick as a supplement.

Please contact the undersigned if there are any questions.

Yours truly,


Jerrold Miller

enc.

cc: as on certificate of service

No. of Copies rec'd
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

RECEIVED

JAN 17 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In re Applications of)	MM Docket No. 93-87
)	
RAYMOND W. CLANTON)	File No. BPH-911216MC
)	
LOREN F. SELZNICK)	File No. BPH-911216MD
)	
For Construction Permit)	
for a new FM Station on)	
Channel 279A in El Rio,)	
California)	DOCKET FILE COPY ORIGINAL

To: The Review Board

JOINT REQUEST FOR APPROVAL OF SETTLEMENT AGREEMENT

Raymond W. Clanton ("Clanton"), and Loren F. Selznick ("Selznick"), by their respective attorneys, and pursuant to Section 73.3525 of the Commission's Rules, hereby respectfully request approval of the attached settlement agreement. The agreement (Appendix A hereto) contemplates dismissal of Selznick's above-referenced application for a new FM station at El Rio, California, and vacation of the findings and conclusions of the Initial Decision ("ID") in this case, 9 FCC Rcd 6930 (ALJ 1990), in consideration for Clanton paying Selznick the amount specified in the agreement, upon Commission approval. In support of this request, the following is respectfully submitted:

1. The ID of Administrative Law Judge John M. Frysiak granted the application of Clanton and denied that of Selznick. Exceptions thereto are due shortly. In order to simplify and expedite proceedings before the Commission, the parties hereto have entered into a settlement agreement which, if approved, would result in the

dismissal with prejudice of Selznick's application, vacation of the findings and conclusions of the ID, and the final grant of Clanton's application.

2. Upon approval of the settlement agreement and dismissal of the Selznick application, Clanton will be the sole remaining applicant for the new El Rio radio station. As there are no basic qualifications issues outstanding against Clanton, his application may be granted immediately. Dismissal of the Selznick application is contingent upon Commission approval of all of the items of the Settlement Agreement.

3. Pursuant to the terms of Appendix A hereto, in consideration for the dismissal of Selznick's application, Clanton will pay the amount specified in the agreement to Selznick. Payment of consideration to Selznick for the dismissal of her application and vacation of the findings and conclusions of the ID are contingent upon the final grant of Clanton's application.

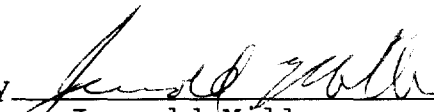
4. The settlement agreement is executed by the respective principals and is made expressly subject to prior Commission approval. The declarations of the parties (Appendix B hereto) show that neither party filed his or her application for the purpose of negotiating or reaching a settlement agreement, and state why the settlement agreement serves the public interest. Selznick's verification of her reasonable and prudent expenses is attached to the Settlement Agreement. As shown thereby, Selznick will receive no money or other consideration in excess of her legitimate and prudent expenses incurred in preparing, filing and prosecuting her

construction permit application.

5. The Board is requested to approve the agreement; dismiss Selznick's application, vacate the findings and conclusions of the ID pursuant to Commission policy regarding settlement of cases prior to a final Commission determination of the merits¹, and grant Clanton's application under the terms of the agreement.

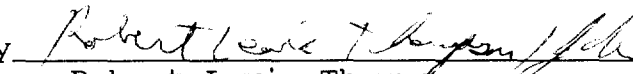
Respectfully Submitted,

RAYMOND W. CLANTON

By 
Jerrold Miller
His Attorney

Miller & Miller, P.C.
P.O. Box 33003
Washington, DC 20033

LOREN F. SELZNICK

By 
Robert Lewis Thompson
Her Attorney

Pepper & Corazzini, L.L.P.
Suite 200
1776 K Street, N.W.
Washington, DC 20006

January 17, 1995

¹See, e.g., Shawn Phalen, 7 FCC Rcd 7638 (1992).

AGREEMENT

THIS AGREEMENT is made this 13th day of January, 1995, between Raymond W. Clanton ("Clanton") and Loren F. Selznick ("Selznick").

WITNESSETH

WHEREAS, Clanton has tendered to the Federal Communications Commission ("Commission") an application for a construction permit for a new FM radio station to be located in El Rio, California, File No. BPH-911216MC ("Clanton Application"); and

WHEREAS, Selznick has tendered to the Commission a mutually exclusive application for a construction permit for a new FM radio station to be located in El Rio, California, File No. BPH-911216MD ("Selznick Application"); and

WHEREAS, although the Clanton Application was granted by the Administrative Law Judge's Initial Decision ("ID"), both applicants have the right to file exceptions thereto; and

WHEREAS, the filing of exceptions will cause substantial delay in the resolution of this case; and

WHEREAS, Clanton is willing to make payment to Selznick of the sum specified herein in exchange for Selznick's request that the Commission dismiss her Application with prejudice and vacate the ID's findings of fact and conclusions of law; and

WHEREAS, Selznick is willing to accept payment from Clanton of the sum specified herein in exchange for her request that the Commission dismiss her Application with prejudice and vacate the ID's findings of fact and conclusions of law; and

WHEREAS, Clanton wishes to avail himself of the Commission's policy which permits applicants whose applications are granted through settlement agreements to withdraw integration commitments; and

WHEREAS, Clanton and Selznick believe that the public interest will best be served if the uncertainty surrounding their applications is resolved, because such resolution will conserve the resources of both the applicants and the Commission, by enabling settlement among the competing applicants for construction permit for a new FM radio station in El Rio, California, thereby resulting in the inauguration of a new radio service to El Rio more quickly than otherwise would be possible; and

WHEREAS, Clanton and Selznick understand that this Agreement will be submitted to the Commission for its approval with a Joint Request for Approval of Agreement, and as such this Agreement will constitute material representations to the Commission; and

NOW, THEREFORE, in consideration of the foregoing and of the terms and conditions set out below, and with the intention of being legally bound hereby, Clanton and Selznick agree to the following:

1. Joint Request: Within the period prescribed by the Commission's rules, Clanton and Selznick shall jointly request in writing ("Joint Request") that the Commission do all of the following:

- (a) Approve the terms of this Agreement.
- (b) Dismiss the Selznick application with prejudice.
- (c) Vacate the findings and conclusions of the ID.

(d) Grant the Clanton Application as amended pursuant to the terms of this Agreement.

Clanton and Selznick shall cause the preparation of all documentation needed to properly support said Joint Request. Each party shall fully cooperate with the other and the Commission by expeditiously and completely providing the other or the Commission with any additional information reasonably requested. Except as otherwise provided herein, Clanton and Selznick agree that should the Commission refuse to approve this Agreement, Clanton and Selznick shall examine the objections of the Commission and timely make individual and joint good faith efforts to resolve all objections in a manner which reflects as closely as possible to the intentions of the parties as set forth herein, in order to resubmit the Agreement for approval. Clanton and Selznick shall each bear its own expenses in the prosecution of this Agreement and all filings contemplated herein.

2. Covenants by Clanton: Clanton agrees that, in exchange for the agreements and covenants of Selznick herein, he shall pay to Selznick the sum of Twenty-five Thousand Dollars (\$25,000.00), as follows:

Within seven (7) months of the date on which an order of the Commission approving this Agreement and granting Clanton's Application becomes final and not subject to timely appeal or reconsideration by the Commission or by any court, Clanton shall pay Selznick the sum of Fifteen Thousand Dollars (\$15,000.00) in cash, or by certified or cashier's check, or by wire transfer. Clanton shall

make a second payment to Selznick in the amount of Ten Thousand Dollars (\$10,000.00) in cash, or by certified or cashier's check, or by wire transfer, no later than one year after the due date of the first payment. Clanton agrees to take no action adverse to this Agreement, the Joint Request, the grant of Clanton's application, vacation of the findings and conclusions of the ID, or the dismissal of Selznick's application.

To provide security for his payments hereunder, Clanton shall promptly amend his application to substitute a wholly-owned corporation as the applicant, and shall pledge all of the issued stock of said corporation to Selznick. Such stock pledge shall take the form as shown in Attachment A to this Agreement. Clanton further agrees that any other owner of any security issued by the corporation shall be required to pledge such security to Selznick, to become a party to the Stock Pledge Agreement, and to be included in the definition of "Pledgor" therein.

3. Covenants by Selznick: Selznick agrees that, in exchange for the agreements and covenants of Clanton herein, she shall cause the dismissal with prejudice of her Application. Selznick agrees to take no action adverse to this Agreement, the Joint Request, any amendment which Clanton may file with respect to his Application, the grant of Clanton's application, the dismissal of Selznick's application, or the construction and first year's operation of Clanton's proposed El Rio radio station, except as those matters may affect the security interest referred to in paragraph 2. hereof. Selznick shall attach hereto documentation sufficient to

establish that her legitimate and prudent expenses in preparing and prosecuting her application before the Commission equals or exceeds \$25,000.00.

4. Notices: All notices, demands, payments and requests required or permitted by this Agreement shall be deemed to have been made if mailed to the addresses stated below:

To Clanton: Raymond W. Clanton
Box 20213
VOC, AZ 86341

copy to: Miller & Miller, P.C.
1990 M Street, NW, #760
Washington, DC 20036

To Selznick: Loren F. Selznick, Esq.
Whitman, Breed, Abbott & Morgan
200 Park Avenue
New York, New York 10166

copy to: Robert Lewis Thompson, Esq.
Pepper & Corrazini
1776 K Street, NW, #200
Washington, DC 20006

5. Integration: This Agreement contains the entire understanding of the parties with respect to the subject matter, and supersedes all previous oral or written agreements or understandings. This Agreement may be amended only by a written document executed by both parties. This document shall be binding on the heirs, successors and assigns of the parties hereto.

6. Counterpart Signatures: This Agreement may be executed by the parties in counterpart with the same effect as if the signatures to both counterpart pages were upon the same copy of the Agreement.

7. Termination: In the event that the Commission has not approved the Joint Request within nine (9) months from the date

hereof, then either party hereto may, upon written notice to the other party, terminate this Agreement without liability and the parties shall, in that event, return to the status quo ante.

8. Construction: This Agreement shall be construed under the laws of California.


9. Specific Performance as a Remedy: Because of the unique nature of the broadcast authorization which is the subject matter of this Agreement, specific performance shall be available as a remedy for breach of this Agreement in addition to all other legal and equitable remedies that may be available under this Agreement.

10. Recovery of Costs: If, on account of any alleged breach or default by either party of its obligations under this Agreement, the other party shall take action to enforce his or her rights hereunder, the prevailing party shall be entitled to recover his or her reasonable costs incurred in such action, including, but not limited to, reasonable attorneys' fees and court costs.

IN WITNESS WHEREOF, and intending to be legally bound, Clanton and Selznick have duly executed this Agreement, on the date first mentioned above.

ATTEST:

RAYMOND W. CLANTON



ATTEST:

LOREN F. SELZNICK

hereof, then either party hereto may, upon written notice to the other party, terminate this Agreement without liability and the parties shall, in that event, return to the status quo ante.

8. Construction: This Agreement shall be construed under the laws of California.

9. Specific Performance as a Remedy: Because of the unique nature of the broadcast authorization which is the subject matter of this Agreement, specific performance shall be available as a remedy for breach of this Agreement in addition to all other legal and equitable remedies that may be available under this Agreement.

10. Recovery of Costs: If, on account of any alleged breach or default by either party of its obligations under this Agreement, the other party shall take action to enforce his or her rights hereunder, the prevailing party shall be entitled to recover his or her reasonable costs incurred in such action, including, but not limited to, reasonable attorneys' fees and court costs.

IN WITNESS WHEREOF, and intending to be legally bound, Clanton and Selznick have duly executed this Agreement, on the date first mentioned above.

ATTEST:

RAYMOND W. CLANTON

ATTEST:

LOREN F. SELZNICK

A handwritten signature in cursive script, reading "Loren F. Selznick", is written over a horizontal line.

STOCK PLEDGE AGREEMENT

STOCK PLEDGE AGREEMENT, dated _____ day of _____ 1995, by and among CLANTON CORPORATION, a corporation to be formed (the "Company"), Raymond W. Clanton, (the "Pledgor") and Loren F. Selznick (the "Pledgee").

W I T N E S S E T H:

WHEREAS, pursuant to a certain Settlement Agreement dated as of January _____, 1995, between Pledgor and Pledgee, (the "Settlement Agreement"), Pledgor has agreed to pay Pledgee in return for the dismissal of her application for a new FM radio station at El Rio, California, the principal amount of Twenty-Five Thousand Dollars (\$25,000) payable to Pledgee, to be paid in two installments;

WHEREAS, it is a condition precedent to the obligations of the Pledgee under the Settlement Agreement that the Pledgee obtain a pledge of all the Shares of the Company as security for payment of Pledgor's obligation under the Settlement Agreement, and the Pledgor is willing to provide such security;

NOW, THEREFORE, in consideration of the foregoing and of the mutual agreements hereafter set forth, the parties do hereby agree as follows:

SECTION 1. Pledge.

Pledgor hereby agrees that any subsequent owner of the Company's stock shall be required to become a party to this Agreement and be included in the definition of "Pledgor". Accordingly, Pledgor assigns and delivers to Pledgee stock certificates constituting all of the issued and outstanding shares of stock of the Company (such shares being herein called the "Stock"), duly endorsed in blank, and Pledgor agrees that the Stock shall be held on the terms and conditions hereinafter set forth as collateral security for the obligations of Pledgor to Pledgee under the terms of the Settlement Agreement. Except as otherwise expressly permitted herein, all certificates for the Stock, certificates for any additional shares, and securities comprising any part of the Stock shall be delivered to the Pledgee, accompanied by proper instruments of assignment duly executed in blank by the Pledgor, and by such other instruments or documents as the Pledgee or its counsel may reasonably request sufficient to transfer the title thereto to the Pledgee or her nominee. Any other shares of Company which may be issued subsequent to the date of this Pledge shall be

subject to the terms hereof and shall contain a statement thereupon so indicating. The Pledgee is hereby authorized to hold any and all of the Stock delivered to it in her own name or at the Pledgee's option to cause such items to be transferred to and held in the name of a nominee.

SECTION 2. Term.

The Pledgee shall hold the Stock as security for the payments due under the Settlement Agreement and the Stock shall remain in escrow until the sums due pursuant to the Settlement Agreement are paid in full, at which time the Pledgee shall deliver the Stock to Pledgor, free and clear of this Agreement, and this Agreement shall thereupon terminate.

SECTION 3. Voting and Dividends.

If the payments due pursuant to the Settlement Agreement are not paid in full on or before the due dates as defined therein, Pledgee shall be entitled to the remedies set forth in Section 5 hereof. While the certificates continue to be held by Pledgee, such certificates shall remain in the name of Pledgor who shall have and exercise all rights of ownership, including the rights to vote the stock and receive dividends thereon.

SECTION 4. Stock Adjustments.

In the event that, during the term of this Agreement, any stock dividend, reclassification, readjustment, or other change is declared or made with respect to the Stock, or any subscription, warrant or other option is exercisable with respect to the Stock, all new substituted, or additional shares, or other securities, issued by reason of any such change or option shall be held by the Pledgee under the terms of this Agreement in the same manner as the shares of stock originally escrowed hereunder. There likewise shall be deposited with the Pledgee, to be added to the pledged property and subject to the pledge, any and all additionally issued shares of the Company, by way of stock dividends, stock splits, stock rights, new securities, or otherwise, to the end that the Pledgee will at all times hold, subject to the pledge, all of the issued and outstanding stock of the Company.

SECTION 5. Remedies.

In the event of non-payment of the sums due under the Settlement Agreement, or any part thereof, the Pledgee may sell, assign and deliver the whole or, from time to time, any part of the Stock or any interest or part thereof, subject to the prior approval of the Federal Communications Commission (the Commission), at any arms-length private sale or at public auction, with or without demand, advertisement or notice of the time or place of sale or adjournment thereof or otherwise, except that notice of any

such sale shall be given to Pledgor thirty (30) days before such sale, for cash, on credit or for other property, for immediate or future delivery, and for such price or prices and on such terms as the Pledgee reasonably may determine, Pledgor hereby waiving and releasing any and all right or equity or redemption whether before or after sale hereunder. At any such sale Pledgee may bid for and purchase for her own account the whole or any part of the Stock so sold free from any such right or equity or redemption. After obtaining all required consents from the Commission and upon completion of the sale, the Pledgee shall deliver the Stock, or any portion thereof, to the purchaser or purchasers thereof. The net proceeds of any such sale shall be payable solely to the Pledgee. Pledgor and Pledgee hereby agree to make good faith efforts to answer Commission inquiries, if any, with respect to obtaining the aforementioned approvals and shall otherwise seek said approvals diligently, each taking all steps reasonably necessary to expedite the procurement of such approvals. Neither failure nor delay on the part of Pledgee to exercise any right, remedy, power or privilege provided for herein or by statute or at law or in equity shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, remedy, power or privilege preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

SECTION 6. Encumbrances.

During the term of this Agreement specified in Section 2, Pledgor shall not permit the Stock to become subject to any mortgage, pledge or other encumbrance without the prior written consent of Pledgee.

SECTION 7. Miscellaneous.

So long as the Pledgee holds the Stock and so long as payment of the Settlement Agreement is not in arrears, she shall upon the receipt thereof promptly send all cash dividends paid thereon to the Pledgor. The Pledgee shall hold any other securities or property distributed in respect of the Stock as part of the Stock deposited hereunder (such other securities and property being included in the definition of the Stock as used herein) it being understood that the Pledgee shall have no responsibility to inquire about or to effect collection of any such dividends, other securities or other property.

SECTION 8. Notices.

All notices hereunder must be in writing and shall be deemed to have been duly given if mailed by first class registered mail, return receipt requested, postage and registry fees prepaid and addressed as follows:

(a) If to Pledgor, to:

Raymond W. Clanton
Box 20213
VOC, AZ 86341

cc Jerrold Miller, Esq.
Miller & Miller, P.C.
1990 M Street, NW, #760
Washington, DC 20036

(b) If to Pledgee, to:

Loren F. Selznick, Esq.
Whitman, Breed, Abbott, & Morgan
200 Park Avenue
New York, NY 10166

cc Robert Lewis Thompson
Pepper & Corrazini
1776 K Street, NW, #200
Washington, DC 20006

Addresses may be changed by notice in writing to the other parties.

SECTION 9. Choice of Law, Etc.

This Agreement shall be construed and enforced with and governed by the laws of the State of California. This Agreement embodies the entire agreement and understanding between the parties and supersedes all prior agreements and understandings relating to the subject matter hereof and this Agreement may not be modified or amended or any term or provision hereof waived or discharged except in writing signed by the party against whom such amendment, modification, waiver or discharge is sought to be enforced. This Agreement shall be binding on the personal representatives, successors and assigns of the parties hereto and shall inure to the benefit of and be enforceable by their personal representatives, successors and assigns.

Section 10. Miscellaneous.

Section 10.1. Term. Upon full and final payment and performance of the Settlement Agreement, this Pledge Agreement shall terminate automatically and have no further force or effect.

Section 10.2. Releases; Partial Releases. Upon termination of this Pledge Agreement in accordance with the provisions of Section 10.1 hereof, the Secured Party will at the Pledgor's request and expense and without unreasonable delay, execute such releases as the Pledgor may reasonable request, in form reasonably acceptable to the Secured Party in all respects.

Section 10.3. Multiple Counterparts. This Pledge Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes and all of which constitute, collectively, one agreement.

IN WITNESS WHEREOF, the parties executed this Agreement as of the day and year first above written.

CLANTON CORPORATION

By _____

WITNESS:

RAYMOND W. CLANTON

By _____

WITNESS:

LOREN F. SELZNICK

By _____

WITNESS:

STATEMENT

I, Raymond W. Clanton, state as follows:

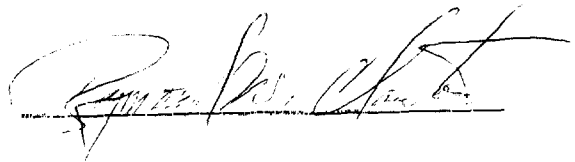
1. I am an applicant for a new FM radio station to operate on Channel 279A at El Rio, California, FCC File No. BPH-911216MC. My application is mutually exclusive with the application of Loren F. Selznick (Selznick) for this facility.

2. A settlement agreement has been entered into with Selznick under which Selznick will receive the consideration specified therein for the dismissal of her application.

3. My application was filed with the intent of obtaining a permit to construct a new broadcast station and not for the purpose of negotiating or achieving a settlement. Other than as specified in the settlement agreement between the parties, there is no consideration for the dismissal of Selznick's application.

4. Approval of the settlement agreement would serve the public interest by reducing the delay and costs associated with the appeals on these two applications, thereby accelerating the advent of a new broadcast service to El Rio.

I declare the foregoing to be true under penalty of perjury.



Date: January 12, 1995.

DECLARATION

I, Loren F. Selznick, do state as follows:

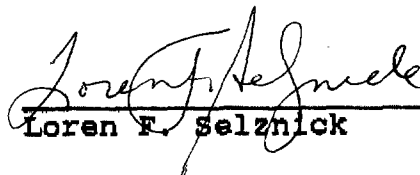
1. I am an applicant for a new FM radio station to operate on Channel 279A at El Rio, California (FCC File No. BPH-911216MD). My application is mutually exclusive with the application of Raymond W. Clanton for this facility.

2. A Settlement Agreement has been entered into with Clanton under which I will receive the consideration specified therein for the dismissal of my application.

3. My application was filed with the intent of obtaining a permit to construct a new broadcast station and not for the purpose of negotiating or achieving a settlement. Other than as specified in the Settlement Agreement between the parties, there is no other consideration, direct or indirect, for the dismissal of my application. My legitimate and prudent expenditures in this proceeding substantially exceed the \$25,000 consideration I would receive under the Settlement Agreement. See Attachment 1.

4. Approval of the Settlement Agreement would serve the public interest by reducing the delay and costs associated with the appeals on these two applications, thereby accelerating the advent of a new broadcast service to El Rio.

I declare the foregoing to be true under penalty of perjury on this 12th day of January, 1995.


Loren F. Selznick

CERTIFICATE OF SERVICE

I hereby certify that on this 17 day of January, 1995, a copy of the foregoing document was placed in the United States mail, first class postage prepaid, addressed to the following:

Hearing Branch, Enforcement Division
Mass Media Bureau
Federal Communications Commission
2025 M Street, NW
Suite 7217
Washington, DC 20554

Robert L. Thompson, Esq.
Pepper & Corazzini
1776 K Street, NW
Suite 200
Washington, DC 20006

Pauline Girvin PLG